



---

---

## WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

---

---

<b>2003 Assembly Bill 356</b>	<b>Assembly Substitute Amendment 1</b>
<i>Memo published: March 9, 2004</i>	<i>Contact: Richard Sweet, Senior Staff Attorney (266-2982)</i>

*Assembly Bill 356* relates to the definition of the practice of chiropractic; chiropractic evaluations, treatments, and referrals to physicians; unprofessional conduct by chiropractors; delegations by chiropractors to physician assistants and other employees; continuing education for chiropractors; nutritional guidance provided by chiropractors to patients; statutory references to physicians and chiropractors; and granting rule-making authority.

*Assembly Substitute Amendment 1 does not include* provisions from Assembly Bill 356 that relate to: (1) defining the term “physician” to include chiropractors; (2) peer review panels; (3) continuing education; (4) the duty of a chiropractor to make referrals to physicians; and (5) delegation of services to physician assistants.

The remainder of the memorandum summarizes the provisions of the substitute amendment.

### *References to Chiropractic Colleges*

Current statutes define the term “practice of chiropractic” as follows:

446.01 (2) “Practice of chiropractic” means:

(a) To examine into the fact, condition, or cause of departure from complete health and proper condition of the human; to treat without the use of drugs as defined in s. 450.01 (10) or surgery; to counsel; to advise for the same for the restoration and preservation of health or to undertake, offer, advertise, announce or hold out in any manner to do any of the aforementioned acts, for compensation, direct or indirect or in expectation thereof; and

(b) To employ or apply chiropractic adjustments and the principles or techniques of chiropractic science in the diagnosis, treatment or prevention of any of the conditions described in s. 448.01 (10).

The substitute amendment modifies par. (b) in the definition above to refer to chiropractic adjustments and the principals or techniques of chiropractic science “that are ***taught at a chiropractic college or university*** approved by the Council on Chiropractic Education or any successor organization” (emphasis added).

In addition, the substitute amendment modifies the current statute that requires an applicant for a chiropractor license to have graduated from a college of chiropractic approved by the Chiropractic Examining Board. The substitute amendment modifies this to refer instead to a college or university of chiropractic accredited by the Council on Chiropractic Education or its successor.

Similarly, the substitute amendment also modifies the current statute that exempts from licensure requirements a student or graduate from a college of chiropractic who practices in a program for the clinical training of students. The current statute refers to clinical practice settings that are connected or associated for training purposes with a college of chiropractic approved by the Chiropractic Examining Board. The substitute amendment instead refers to a college or university of chiropractic that is accredited by the Council on Chiropractic Education or its successor.

### **Nutrition Counseling**

The substitute amendment states that a chiropractor who is granted a license under ch. 446, Stats., on or before January 1, 2003, may provide counsel, guidance, direction, advice, or recommendations to a patient regarding the ***health benefits of vitamins, herbs, or nutritional supplements*** only if the chiropractor has completed 48 hours in a postgraduate course of study in nutrition that is approved by the Chiropractic Examining Board. This requirement does not apply if the chiropractor is also certified as a dietician.

### **Delegation of Duties**

Current law provides that a chiropractor may delegate to a person who is not licensed as a chiropractor the performance of services that are adjunctive to the practice of chiropractic if the services are performed under the direct, on-premises supervision of the chiropractor. However, current law states that a chiropractor may not delegate to a person who is not a licensed chiropractor the making of a diagnosis, the performance of a chiropractic adjustment, the analysis of a diagnostic test or clinical information, or any practice or service that the Chiropractic Examining Board, by rule, prohibits a chiropractor from delegating to such a person.

The substitute amendment states that in an application for renewal of a chiropractor’s license, the applicant must identify each employee (other than a nurse, physical therapist, or athletic trainer) to whom clinical work is delegated. If the Chiropractic Examining Board has promulgated rules requiring such an employee to complete a ***training program or course of instruction*** to perform the delegated work, the chiropractor seeking renewal of the license must also provide the name, date, and sponsoring organization for the training program or course of instruction that the employee has completed.

### **Supervision or Direction of Nurses**

The substitute amendment modifies the statutes that define “practical nursing” and “professional nursing.” The term “practical nursing” is defined to mean certain care under the specific direction of a nurse, physician, podiatrist, dentist, or optometrist, while the term “professional nursing” is defined to mean certain care under the general or special supervision or direction of a physician, podiatrist, dentist, or optometrist. The substitute amendment adds chiropractors to both statutes.

### **Evaluations and Referrals**

The substitute amendment states that a chiropractor must evaluate each patient to determine whether the patient has a condition that is treatable by chiropractic means and specifies requirements regarding the conduct of the evaluation. A chiropractor is required to discontinue treatment by chiropractic means if, at any time, the chiropractor determines, or reasonably should have determined, that the patient’s condition will not respond to further treatment by chiropractic means. However, a chiropractor may still provide supportive care to a patient.

### **Discipline of Chiropractors**

Current law allows the Chiropractic Examining Board to reprimand a licensee or deny, limit, suspend, or revoke a license if the licensee has engaged in certain activities. One of those activities is being guilty of unprofessional conduct, as defined in current statutes.

The substitute amendment adds to the list of activities for which the licensee may be disciplined a provision that the licensee has violated ch. 446, Stats., or any rule promulgated under that chapter.

In addition, the substitute amendment adds the following to the list of circumstances that constitute ***unprofessional conduct***:

1. Billing for chiropractic services that were inappropriate, unnecessary, or of substandard quality.

2. Billing for a service that was not performed. This includes billing for a service that was performed by a staff person without the training required by state law. It also includes a pattern of conduct in which a chiropractor bills a Current Procedural Terminology (CPT) Code in a manner inconsistent with certain standards for that Code. Finally, it also includes a pattern of conduct in which a chiropractor bills for a service using a higher level CPT Code than the service that was actually provided to the patient with the intent of obtaining unearned reimbursement.

3. Failure to collect a deductible or copayment required by a patient’s insurer. This provision does not apply if the chiropractor has made reasonable efforts to collect the deductible or copayment or in cases where the patient has a financial hardship.

4. Falsifying a claim.

5. A pattern of conduct that involves billing for a unit of service that was not actually performed with the intent of obtaining unearned reimbursement.

## 6. Sexual misconduct.

The substitute amendment, requires suspension for at least *six months* of a license of a chiropractor who commits a third violation of the statutes dealing with *unprofessional conduct*, and for at least *two years* for a fourth such violation. Different penalties for sexual misconduct are described below.

If the board finds that a chiropractor is guilty of a second or subsequent offense of unprofessional conduct, the board may assess against the chiropractor a forfeiture of three times the amount that the chiropractor billed a patient for inappropriate, unnecessary, or substandard chiropractic care, or \$5,000, whichever is less.

For purposes of the above provisions, the term “pattern of conduct” is defined as more than one occurrence.

The provision dealing with *sexual misconduct* states that a chiropractor engages in sexual misconduct if he or she engages in sexual contact, exposure, or gratification, sexually offensive communication, dating a patient while the patient is under the chiropractor’s professional care or treatment or within six months after discharge from care or treatment, or other sexual behavior with or in the presence of a patient and a reasonably prudent chiropractor under similar conditions and circumstances would find the conduct unprofessional. Consent is not an issue for purposes of this provision. The substitute amendment distinguishes between contact violations (i.e., violations that involve physical contact with a patient) and noncontact violations.

The substitute amendment provides specific *penalties* for chiropractors who violate the prohibition on *sexual misconduct*. A chiropractor who commits a first noncontact violation must be required to attend training approved by DRL regarding sexual misconduct and the chiropractor’s license must be suspended for not less than 90 days. The license of a chiropractor who commits a second noncontact violation or a first contact violation must be suspended for one year. Finally, the license of a chiropractor who commits a third noncontact or a second contact violation must be revoked.

### **Legislative History**

Assembly Substitute Amendment 1 was introduced by Representative Gregg Underheim. On March 9, 2004, the Assembly Committee on Health recommended adoption of the substitute amendment by a vote of Ayes 15, Noes 0, and passage of the bill as amended by a vote of Ayes 14, Noes 1.

RNS:ksm